

REMARKS

Applicants have reviewed the Application in light of the Final Office Action mailed July 21, 2009. Claims 25-48 are pending in this Application. Claims 31-33 stand rejected under 35 U.S.C. § 102(e) and Claims 25-30 and 34-48 stand rejected under 35 U.S.C. § 103(a). Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Claims 31-33 stand rejected by the Examiner under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication 2003/0131353 filed by Rolf Blom *et al.* (*Blom*). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention. Further, Applicants submit that *Blom* is not a prior art reference as noted in Applicants' Response filed on April 23, 2009. In response to Applicants' submission, the Examiner notes that he "disagrees with the Applicant" but provides no support of record showing how *Blom* can qualify as § 102(e) reference. (Page 9 of the Final Office Action).

In order to qualify as prior art under 35 U.S.C. § 102(e), a reference must meet one of the following criteria:

the invention was described in

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent.

Applicants submit that *Blom* does not qualify as prior art under 35 U.S.C. § 102(e). Applicants claim priority to German Application DE 102 39 062.2 filed **August 26, 2002**. The Examiner acknowledged Applicants' claim for foreign priority under 35 U.S.C. § 119 and acknowledged the receipt of all relevant supporting documentation. See the Office Action Summary mailed on October 27, 2008.

Blom's filing date is **December 11, 2002**, which is well after Applicants' priority date, and thus *Blom* cannot serve as prior art. Even considering *Blom's* priority claim, which refers back to U.S. Provisional Application No. 60/338,686 ('*686 Provisional Application*') filed on **December 11, 2001** ('*686 Application*'), Applicants submit that the '*686 Provisional Application*' also does not qualify for at least two reasons: (1) the '*686 Provisional Application*' was never published; and (2) the '*686 Provisional Application*' does not recite the elements relied upon by the Examiner.

Therefore, *Blom* is not prior art and thus cannot anticipate Claims 31-33. For at least these reasons, Applicants submit that Claim 31 and all claims that depend therefrom are allowable. Applicants respectfully request that reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e).

Rejections under 35 U.S.C. § 103

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Even if each limitation is disclosed in a combination of references, however, a claim composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Rather, the Examiner must identify an apparent reason to combine the known elements in the fashion claimed. *Id.* "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with

some rational underpinning to support the legal conclusion of obviousness.” *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Finally, the reason must be free of the distortion caused by hindsight bias and may not rely on ex post reasoning. *KSR*, 127 S.Ct. at 1742. In addition, evidence that such a combination was uniquely challenging or difficult tends to show that a claim was not obvious. *Leapfrog Enterprises, Inc. v. Fisher-Price, Inc. and Mattel, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007), citing *KSR*, 127 S.Ct. at 1741.

Claims 25-30 and 34-48 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Blom* in view of U.S. Patent Publication 2002/0023219 filed by Menno Anne Treffers *et al.* (*Treffers*) and further in view of U.S. Patent Publication 2002/0112163 filed by Mark Ireton (*Ireton*). Applicants respectfully traverse and submit the cited art combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

Subject matter that is prior art under 35 U.S.C. § 102 can be used to support a rejection under section 103. *Ex parte Andresen*, 212 USPQ 100, 102 (Bd. Pat. App. & Inter. 1981). However, *Blom* is not prior art under 35 U.S.C. § 102(e) based at least on the reasons set forth above. Thus, Applicants submit that *Blom*, separately or as combined by the Examiner, cannot be used as prior art under 35 U.S.C. § 103(a).

Treffers and *Ireton*, separately or as combined by the Examiner, also fail to teach or suggest all the elements of the pending Claims. For example, *Treffers* and/or *Ireton* fail to teach or suggest all the elements of Independent Claim 31, which recites, in part:

- providing an encrypted user data object in a first telecommunications device;
- requesting description information relating to content of the encrypted user data object from a data provisioning component;
- transmitting the requested description information from the data provisioning component to the first telecommunications device;
- checking whether the content having the attributes specified in the description information can be used by the first telecommunications device; and
- requesting from the data provisioning component, upon successful checking of the attributes specified in the description information, a confirmation

object which is assigned to a rights object assigned to the encrypted user data object in order to check compatibility of the rights object and the encrypted user data object.

Applicants submit that because *Treffers* and/or *Ireton* fail to teach or suggest all the elements noted above, Claim 31 and its dependent Claims, including Claims 34-36, are patentably distinct over the cited references.

As another example, *Treffers* and/or *Ireton* fail to make obvious all the elements of Independent Claim 25, which recites, in part:

- generating a rights object for an encrypted user data object by a data provisioning component, the rights object having assignment information for assigning the rights object to a container object having an encrypted user data object, decryption information for decrypting the encrypted user data object, and rights information for describing usage rights of the encrypted user data object;

- generating a confirmation object assigned to the rights object by the data provisioning component, the confirmation object having assignment information for assigning the rights object to an encrypted user data object and a checksum of the encrypted user data object;

- transmitting a container object to a first telecommunications device, the container object having a content section in which an encrypted user data object is provided, and a description section in which a determined checksum of the encrypted user data object is provided;

- extracting the checksum from the description section of the container object;

- re-determining the checksum of the encrypted user data object provided in the content section of the container object;

- comparing the extracted checksum with the re-determined checksum so that, should the two checksums tally, an error-free transmission of the encrypted user data object may be concluded;

- requesting, via the first telecommunications device, the confirmation object assigned to the rights object to be transmitted to the first telecommunications device;

- transmitting the confirmation object from the data provisioning component to the first telecommunications device;

- extracting the checksum from the confirmation object; and

- comparing the checksum extracted from the confirmation object with the redetermined checksum so that, should the two checksums tally, compatibility of the rights object assigned to the confirmation object and the encrypted user data

object transmitted to the first telecommunications device in the container object may be concluded.

For analogous reasons, *Treffers* and/or *Ireton* also fail to teach or suggest similar elements recited in Independent Claim 48. Accordingly, the cited reference(s) cannot render Claims 25 and 48 obvious.

For at least these reasons, Independent Claims 25, 31, and 48 and all claims that depend therefrom are patentably distinct over the cited references. Applicants respectfully request withdrawal of the rejections under 35 U.S.C § 103(a) and full allowance of all pending claims.

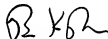
CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2684.

Respectfully submitted,
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